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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/880,514	06/12/2001	Pamela A. Kramer	ACS 54812 (23471)	5333
24201	7590	01/11/2005	EXAMINER	
FULWIDER PATTON LEE & UTECHT, LLP HOWARD HUGHES CENTER 6060 CENTER DRIVE TENTH FLOOR LOS ANGELES, CA 90045			RAYFORD, SANDRA M	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/880,514

Applicant(s)

KRAMER, PAMELA A.

Examiner

Sandra M. Nolan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-28,32-53 and 58-74 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-28,32-53 and 58-74 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>"Revised Amendment Practice"</u> |

DETAILED ACTION

Claims

1. Claims 25-28, 32-53 and 58-74 are pending.

Withdrawal of Allowance

2. The allowance of claims 43 and 46-48 is withdrawn in order to apply the new grounds of rejection below.

Rejections Withdrawn

3. All of the 35 USC 112 rejections made in sections 9-10 of the 06 August 2004 office action ("the last office action") are withdrawn in view of the amendments/-arguments made in the 19 October 2004 response ("the last response").
4. All of the 35 USC 102 and 103 rejections made in sections 12-15 of the last office action are withdrawn in view of the amendments/arguments made in the last response.

Improper Captioning

5. It is noted that the captions for claims 30-31 and 54-57 are improper. The term "deleted" is not an acceptable caption for these claims. Please label them as "(cancelled)". See the enclosed sheet re: revised amendment practice.

New Rejections

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 25-28, 32-53 and 58-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Helmus (US 2002/0032477 A1) in view of Kay et al (US 6,502,767).

Helmus teaches stents (title) with spray coatings thereon (par. 0016). The coatings contain polymers (par. 00170). The stents are made of titanium alloys or stainless steel (par. 0019). The coatings have variable thicknesses (par. 0021). The stents are braided (par. 0015). Figure 1A shows a net-like stent.

Helmus fails to teach a cold spray process.

Kay teaches a cold spray process (title) in which metal, alloy or polymer coating powder and gas are formed into a supersonic jet (col. 1, lines 7-13). The gas and the powder are mixed before coating (col. 3, lines 1-3). The gas is air, nitrogen or helium (col. 3, lines 46-49) that is heated to 200 to 700 degrees C (col. 3, line 52). Coating takes place at a temperature below the fusing temperature of the powder. The Kay process gives greater flexibility in coating system design (col. 2, lines 26-30).

The patents are analogous because they both deal with coating processes.

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It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the cold spray process of Kay to coat the stents of Helmus in order to attain greater coating system flexibility.

The motivation to employ the cold spray process of Kay to coat the stents of Helmus is found at col. 2, lines 26-30 of Kay, where coating system flexibility is taught.

It is deemed desirable to coat using flexible coating systems so that manufacturers can have optimal control over the coating process.

In the absence of convincing objective evidence to the contrary, the post-coating processes recited in various dependent claims are deemed conventional in the making/processing of stents.

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 25-28, 32-53 and 58-74 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over

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claims 1-20 of copending Application No. 10/283,951 (as recited in US 2004/0088038A1; "the '038 publication") in view of Kay.

This is a provisional obviousness-type double patenting rejection.

The '038 publication claims the coating of stents with polymers. It fails to teach cold spray coating or coating with metal alloys.

Kay is discussed above.

It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the cold spray process and the metal alloy coatings of Kay to coat the stents of the '038 publication in order to give the manufacturer greater flexibility in processing.

It is deemed desirable to coat using flexible coating systems so that manufacturers can have optimal control over the coating process.

In the absence of convincing objective evidence to the contrary, the post-coating processes recited in various dependent claims are deemed conventional in the making/processing of stents.

11. Claims 25-28, 32-53 and 58-74 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10, 12, 15-21 and 29-31 of copending Application No. 10/331,838.

This is a provisional obviousness-type double patenting rejection.

The '838 application claims the coating of stents (claim 5 of that application), via cold spray processes, to give graded coatings and then applying drugs to the coated stents.

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It would have been obvious to one having ordinary skill in the art to omit the grading and drug-coating steps of the '838 application's claims in order to simplify the manufacturing process.


In the absence of convincing objective evidence to the contrary, the post-coating processes recited in various dependent claims are deemed conventional in the making/processing of stents.

Conclusion

Any inquiry concerning this communication should be addressed to Sandra M. Nolan-Rayford, at telephone number 571/272-1495. She can normally be reached Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

If attempts to reach the examiner are unsuccessful, her supervisor, Harold Pyon, can be reached at 571/272-1498.

The fax number for patent application documents is 703/872-9306.


S. M. Nolan-Rayford
Primary Examiner
Technology Center 1700

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